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Mohammad Mukati

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

MOHAMMAD MUKATI, an individual,

Plaintiff,

v.

JOHN DOE, et al.,

Defendants.

Case No. 4:17-cv-07093-YGR

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S RENEWED MOTION FOR
TEMPORARY RESTRAINING ORDER**

[Fed. R. Civ. P. 65; L.R. 65–1]

Date: TBD

Time: TBD

Cttrm: 1301 Clay Street

Oakland, CA 94612

Before: Hon. Yvonne Gonzalez
Rogers

1 Plaintiff, Mohammed Mukati (hereinafter "Plaintiff"), by and through his counsel,
2 respectfully submits this Memorandum of Points and Authorities in support of his
3 renewed motion for a preliminary injunction: a) directing the domain name registrar
4 Namecheap, which controls five of the 446 Stolen Domain Names, to transfer the Stolen
5 Domain Names to the domain registrar, Dynadot, which currently controls 441 of the
6 Stolen Domain Names; b) directing Dynadot to place all of the Stolen Domain Names in a
7 single account, allow Plaintiff to control said account, and allow Plaintiff to pay for
8 renewals of all the Stolen Domain Names.

9 Defendant John Doe ("Defendant") intentionally, maliciously, and willfully, using
10 nefarious means, obtained unlawful access to the Plaintiff's email account and domain
11 name registration account, and thereafter transferred to himself 446 of Plaintiff's domain
12 names by taking control of Plaintiff's Dynadot account. Defendant also re-directed all
13 Internet traffic to the stolen domain names to himself. Further, the Defendant attempted
14 to sell the stolen domain names back to the Plaintiff, in an attempt to extort money from
15 the Plaintiff.

16 Plaintiff seeks a preliminary injunction a) directing the domain name registrar
17 Namecheap, which controls five of the 446 stolen domain names, to transfer the stolen
18 domain names to the domain registrar, Dynadot, which currently controls 441 of the
19 stolen domain names; b) directing Dynadot to place all of the stolen domain names in a
20 single account, allow Plaintiff to control said account, and allow Plaintiff to pay for
21 renewals of all the stolen domain names.¹ Failure of Namecheap to transfer the stolen
22 domain names to Dynadot, and the failure of Dynadot to give Plaintiff control of the stolen
23 domain names, will allow the thief to place any type of content on the websites at the
24 stolen domain names, including content that may be harmful to both the reputation and
25 future use of the domain names. This would cause irreparable injury to Plaintiff. The thief
26 who stole the domain names will be well aware of this lawsuit even if they do not

27 ¹ Notably, domain name registrars Dynadot, Inc. and Namecheap, Inc. have already
28 tendered control of the stolen domain names in their possession to the Court, by
submitting registrar certificates under 15 U.S.C. § 1125(d)(2)(D)(i)(I). [D.E. 8, 12.]



1 respond, and the thief will know that their time to control and exploit the domain names is
2 limited. Thus, quick action by this Court is required to avert such irreparable harm.

3 **Statement of Facts**

4 1. Plaintiff purchased the 446 domain names as set forth on Exhibit 1 to the
5 Complaint and named *in rem* in the Complaint as defendants (hereinafter, “Stolen
6 Domain Names”). Plaintiff has owned the Stolen Domain Names ever since this initial
7 registration. (Declaration of Mohammad Mukati in Support of Plaintiff’s Renewed Motion
8 for Temporary Restraining Order (“Mukati Decl.”) ¶ 5 & Ex. 1; Verified Compl. ¶18.)

9 2. Many of the Stolen Domain Names were bought or renewed for Plaintiff by
10 his employees / contractors, including Jamila Lota. (Mukati Decl. ¶ 12; Declaration of
11 Lota Jamila in Support of Renewed Motion for Temporary Restraining Order (“Jamila
12 Decl.”) ¶ 6.)

13 3. Plaintiff uses a number of advertising systems to drive internet traffic to his
14 websites at the Stolen Domain Names. One of the companies is called PropellerAds and
15 has a website at: <https://propellerads.com/>. Propeller does not allow use of their system
16 unless their customer can verify ownership of any domain names used in advertising.
17 (Mukati Dec ¶ 17 & Exs. 5–6.) Thus, if Plaintiff cannot verify his ownership of the Stolen
18 Domain Names, he will not be able to uses this advertising service.

19 4. Google works in a similar fashion as PropellerAds, requiring ownership
20 verification before use of the Google advertising platform.² (Mukati Decl. ¶ 18 & Ex. 7.)

21 5. 100 pages of expiring domain name emails from Dynadot listing the Stolen
22 Domain Names makes it clear that according to Dynadot’s system Mukati is the true
23 owner of the Stolen Domain Names. (Mukati Decl. ¶ 13 & Ex. 2.)

24 6. Both Plaintiff and Plaintiff’s mother have renewed the Stolen Domain
25 Names over the years. (Mukati Decl. ¶ 15.)

26 7. Payments to Dynadot for the renewal of the Stolen Domain Names from
27

28 ² Google domain verification instructions may be found at:
<https://support.google.com/a/answer/6248925?hl=en>



February 25, 2016 to April 3, 2017, prior to them being stolen, also show that Dynadot's system registers Mukati as the true owner of the Stolen Domain Names (Mukati Decl. ¶ 14 & Ex. 3), as do payments by Plaintiff's mother, Samina Mukati via her PayPal account for the renewal of the Stolen Domain Names before they were stolen. (Mukati Decl. ¶¶ 15–16 & Ex. 4.)

8. The Stolen Domain Names are used by the Plaintiff for his websites that sell goods and services and for monetizing Internet traffic. The Stolen Domain Names generate substantial income as well as good will for Plaintiff's business and support for his business reputation. (See Verified Compl. *passim*; Mukati Decl. *passim*.)

9. In some cases Defendant Doe changed the DNS settings for certain Stolen Domain Names and is redirecting all visitors to the particular Stolen Domain Names to websites under Defendant's control, and thereby depriving Plaintiff of income arising from the particular Stolen Domain Names. One example of such a domain is Geomovies.co which was previously making \$45,000 a month, which revenue is now being redirected into Defendant Doe's pocket. (See Mukati Decl. ¶ 11.)

10. Due to Defendant Doe's actions Plaintiff no longer has the ability to pay his employees (Jamila Decl. ¶ 8) and continues to have to pay on his advertising contracts in the amount of \$21,000 a month. (Mukati Decl. ¶ 19.)

11. By modifying the DNS settings of the Stolen Domain Names, all Internet traffic and emails to the Stolen Domain Names have been re-directed to Defendant, and the associated income and positive reputation have been forever lost to Plaintiff. (Mukati Decl. ¶ 20.)

12. Due to Defendant's intentional, willful, and malicious actions that have caused irreparable harm to Plaintiff's business and reputation, Plaintiff brought this action.

Argument

To be entitled to a preliminary injunction a movant must show 1) likelihood of irreparable harm to Plaintiff without preliminary injunction, 2) likelihood of little harm to



Defendant from the injunction; 3) likelihood of success by the Plaintiff on the merits; and 4) the public interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008). The court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief. *Id.*

I. Irreparable Harm to Plaintiff without Preliminary Injunction

Defendant's actions have abruptly stopped Plaintiff's business. (Mukati Decl. *passim*.) No longer can Plaintiff continue to buy domain names and set up websites for profit, as his revenue has been cut off by Defendant. (See Mukati Decl. *passim*.) Further, Plaintiff has the continued burden of paying for the costs of the business – loan notes, website hosting, and employees (if he does not wish to lose them) without the income from the business to pay for those costs. (See Compl., D.E. 1 ¶ 42.) This has placed Plaintiff at risk for significant financial and reputational loss. (See *id.*) It will also place Plaintiff's employees in the position of having to find other work. (See *id.*) Further, through use in commerce for many years, Plaintiff has developed common law trademark rights in the subject marks, and the Defendant's act of redirecting Plaintiff's movie-related domain names means that Plaintiff's regular customers will look elsewhere for their movie services. (See Compl., D.E. 1 ¶¶ 21, 39.) In the absence of a preliminary injunction, the Defendant will have free rein to destroy the good reputation of the Stolen Domain Names, which the Plaintiff has spent years building. (See Compl., D.E. 1 *passim*.)

II. Harm to Defendant Minimal

The harm to the Defendant (if any), on the other hand, is the mere deprivation of ill-gotten gains.

III. There is a Substantial Likelihood of Success on the Merits

The Stolen Domain Names are owned by the Plaintiff and stolen by the Defendant, through Defendant's unauthorized access to the Plaintiff's email and domain name management accounts. In California a registrant has "an intangible property right in his [or her] domain name" *Kremen v. Cohen*, 337 F.3d 1024, 1029 (9th Cir. 2003).

The WHOIS records³ for the Stolen Domain Names show that Plaintiff was the owner of the Stolen Domain Names prior to their theft and that ownership was renewed regularly by Plaintiff, leaving no doubt that, but for Defendant's actions, Plaintiff would still have a right to the Stolen Domain Names. Accordingly, Plaintiff has a substantial likelihood of success on the merits.

IV. Public Interest

Courts of equity, in exercising their discretion, should pay particular regard to the public consequences in employing the extraordinary remedy of injunction. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). The public interest analysis for the issuance of a preliminary injunction requires the court to consider whether a critical public interest would be harmed by the granting of preliminary relief. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

Here, the public interest is in fact benefitted by granting a preliminary injunction, because absent an injunction a) the Plaintiff will be permanently deprived of the income from the Stolen Domain Names and the associated websites; b) Plaintiff's employees may lose their jobs; c) Plaintiff will be in the position where he will soon no longer be able to make the payments on his loans; d) and it is likely that Plaintiff's customers will be confused when going to domain names being controlled by Defendant thinking they are controlled by Plaintiff. Further, the public interest in certainty of control of one's property would be promoted by the issuance of a preliminary injunction.

V. Conclusion

For the aforesaid reasons Plaintiff requests a preliminary injunction a) directing the domain name registrar Namecheap, which controls five of the 446 Stolen Domain Names, to transfer the Stolen Domain Names to the domain registrar, Dynadot, which currently controls 441 of the Stolen Domain Names; b) directing Dynadot to place all of the Stolen Domain Names in a single account, allow Plaintiff to control said account, and

³ WHOIS records are created by accredited domain name registrars, and reflect the identities of registrants of domain names. See, <https://www.icann.org/resources/pages/what-2013-03-22-en>.

1 allow Plaintiff to pay for renewals of all the Stolen Domain Names.

2
3 Respectfully submitted,

4 DATED: January 5, 2018

KRONENBERGER ROSENFELD, LLP

5
6 s/ Karl S. Kronenberger

Karl S. Kronenberger

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8 Attorneys for Plaintiff

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